IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 36883 of 2007(N)

---

PETITIONER:

---

D.MADHULAL S/O JOHN,
MOOLAYILVILA DENNIS VILLA,
KANJIRAMKULAM DESOM,
KANJIRAMKULAM VILLAGE

BY ADV. SRI.D.KISHORE

RESPONDENT:

---

T. GEORGE, S/O THANKAYYAN NADAR,
THANPONKALA KALIYAL KETTIYA
VADKKERIKU PUTHEN VEEDU,
KANJIRAMKULAM DESOM,
KANJIRAMKULAM VILLAGE, TVM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.N.KRISHNAN, J.**

**----------**

**W.P.(C). NO. 36883 OF 2007**

**----------**

**Dated this the 13th day of December, 2007**

**J U D G M E N T**

This writ petition is filed seeking to set aside Exts.P5 and P7 orders. Ext.P5 is an order passed in E.A 257/07 IN O.S. 128/03. It is an application filed by the auction purchaser for sanction to deposit the balance sale consideration. Ext.P7 is the order passed in E.P.110/05 IN O.S.128/03 whereby the court has confirmed the sale and closed the execution proceedings. The whole question revolves upon the power of the court to condone the delay in depositing the balance sale consideration under order XXI Rule 85 CPC. Under Order XXI Rule 85 the balance consideration has to be deposited at least on the 15th day from the sale of the property. Whether the court has got the power to extend the time has been considered by the Apex court as well as this court in two decisions reported in **Gangabai Gopaldas Mohrta v. Fulchand** [AIR 1997 SC 1812] and **Kadeeja v. Chandrika** [2005 (1) KLT 434]. In the decision reported in **Gangabai Gopaldas Mohrta v. Fulchand [**AIR 1997 SC 1812] the Apex court held that non compliance of Rules 84 and 85 in the

matter of deposit of sale amount, the sale is rendered to be void. Therefore until and unless the amount is deposited on the 15th day after the sale, the sale automatically gets void on account of the non compliance of the statutory requirements under Order XXI Rule 85. This court in the decision reported in **Kadeeja v. Chandrika** [2005 (1) KLT 434] also held that failure to deposit the balance purchase money within the statutory period of 15 days will result in cancellation of the sale itself. I am afraid that the court has not applied its mind to the decisions referred to above and passed the order for condoning delay and permitting the auction purchaser to deposit the amount. This appears to be incorrect. Since the auction purchaser/decree holder is not heard in the admission stage, I set aside the order and direct the court below to consider the matter afresh in the light of the above two decisions and pass appropriate orders.

The writ petition is disposed of accordingly.

**M.N.KRISHNAN, JUDGE**

vps